

AGREEMENT

THIS AGREEMENT is made and entered into this 10th day of May, 2005, by and between TULARE IRRIGATION DISTRICT, "District," an Irrigation District organized and existing pursuant to the laws of the State of California (hereinafter referred to as "District"), and the City of Tulare, a Municipal Corporation of the State of California (hereinafter referred to as "City")

WITNESSETH

A. WHEREAS, District is a public entity engaged in the importation and delivery of water for irrigation purposes to landowners within the District; and

B. WHEREAS, District's water importation efforts create an important groundwater recharge benefit to City; and

C. WHEREAS, City and District entered into an Agreement dated August 18, 1954 (hereafter referred to as "1954 Agreement"), which provided for the use by City of certain canal and ditch facilities owned and controlled by District for the purpose of disposing of storm drainage; and

D. WHEREAS, the 1954 Agreement, in recognition of the groundwater recharge and storm water disposition benefits afforded by the District, provided for the payment by City of fees to replace assessments the District loses by virtue of the detachment from the District of lands that are annexed into the City; and

E. WHEREAS, the 1954 Agreement provided terms for the maintenance and control of certain District facilities necessary to handle City's storm drainage needs; and

F. WHEREAS, the 1954 Agreement terminated by its terms in 1988, but the parties have been operating pursuant to the terms of the 1954 Agreement notwithstanding its expiration; and

G. WHEREAS, consistent with the 1954 Agreement, the District granted its interest in a portion of the Kaweah Ditch to the City by way of a quitclaim deed dated August 18, 1954, subject to a reserved right for the District to use the portion of the granted ditch for the conveyance of irrigation water; and

H. WHEREAS, the parties desire to enter into a new agreement based generally on the provisions of the 1954 Agreement, and desire also to enter into additional agreements regarding, among other things, policies for the conversion of canal or ditch easements to pipeline

easements; construction of encroachments within such converted easements; conditions to be imposed for fencing of canal, ditch or pipeline easement areas; and agreements to enter into various joint projects;

NOW THEREFORE, the parties hereto covenant and agree as follows:

1. Acknowledgment of Reserved Right of District To Use City-owned Portions of Kaweah Ditch Pipeline. The parties acknowledge that although portions of the Kaweah Ditch were deeded to the City by Quitclaim Deed dated August 18, 1954, the District retained the right to use the Kaweah Ditch Pipeline to its full capacity for the conveyance of District's water. This reserved right is limited only by District's obligation under this Agreement to allow for the specified storm drain flows.

2. Use of District Facilities By City For Storm Drain Purposes. The District does hereby give and grant to the City the right and privilege of pumping water, or otherwise diverting water from its storm drain system, into the irrigation canals of the District running through the City, or along or near the boundary lines of the City, as follows:

a. That portion of the irrigation ditch or pipeline commonly known as the Kaweah Ditch Pipeline existing within the boundaries of the City of Tulare, as they may from time to time be modified;

b. That portion of the irrigation ditch commonly known as the Town Ditch existing within the boundaries of the City of Tulare, as they may from time to time be modified and

c. That portion of the irrigation ditch commonly known as the Railroad Ditch existing within the boundaries of the City of Tulare, as they may from time to time be modified.

3. Discharge Volumes. The City agrees that it will not, without the written consent of the District through its Board of Directors or General Manager, divert more than the following amounts:

a. Thirty cubic feet per second (30 cfs) of water at any time into Kaweah Ditch Pipeline; or

b. Seventy-five cubic feet per second (75 cfs) of water at any time into the Town Ditch; or

c. Twenty cubic feet per second (20 cfs) of water at any time into the Railroad Ditch (not including the flow from the Kaweah Ditch and the Town Ditch).

The above-noted discharge rates are maximum rates, and are subject to the limitations of the particular facilities that are actually in place. The parties acknowledge that particular portions of the above-noted facilities may have capacities that are lower than the above-noted maximum discharges.

4. Maintenance. District hereby agrees to keep up and maintain at its cost and expense the above-referenced ditches or pipelines which are owned by District, together with District's system of ditches connected therewith, so that they may have the capacity to dispose of the water from the storm drain system of the City. City hereby agrees to keep up and maintain at its cost and expense the portion of the Kaweah Ditch Pipeline which was transferred to City by quitclaim deed dated August 18, 1954, so that the Kaweah Ditch Pipeline maintains the capacity to carry irrigation water to other facilities of the District.

5. Additional Facilities. The parties acknowledge that there may be additional locations other than those enumerated above at which City has established a discharge of storm water into District's system. These additional locations may or may not be properly authorized through separate agreements between City and District, or they may have been intended to be included within the capacities noted above. The parties agree that as part of the ongoing efforts to meet and confer regarding the operation of this Agreement (as called for below), City and District will endeavor to inventory and quantify all discharges, including those that are in addition to the authority established by this Agreement. The parties further agree to amend this Agreement, if necessary, to establish the terms under which such additional discharges will be accepted by District.

6. Operation And Control Of Headgates, Pumping Stations And Diversion Points. City agrees that District shall exercise exclusive control of the headgates which regulate the flow of water into and through the ditches subject to this Agreement during the storm seasons for the duration of this agreement, and City further agrees that District's acceptance of the storm drain volumes provided in paragraph 2 above is subject to the existence of spare capacity in the subject ditches at the time of the desired discharge. District agrees that City shall have the right to control the pumping stations and diversion points it maintains for the purpose of diverting storm drain water pursuant to this Agreement into the subject canals and pipelines, providing such

operation does not cause the volume of such discharges to exceed the volumes provided in paragraph 2 above.

7. Installation of Additional Pumping Stations. District agrees that City may establish such additional pumping stations and diversion points as it may, from time to time, require, upon any rights of way owned by District, for the purpose of diverting storm water into the ditches that are the subject of this Agreement, provided that such pumping stations will not interfere with District's use and maintenance of such ditches or pipelines, or with the rights of others in said rights of way, or increase the total diversion volume beyond that provided in paragraph 2 above. City shall consult with District prior to construction of any such pumping stations and diversion points, and shall apply for and receive any encroachment agreement that District shall require.

8. Non-Pollution Agreement. City hereby agrees that it will not deposit in any ditches, canals or pipelines of District any water which is polluted with sewage or any other unhealthful or noxious matter. In addition, City specifically agrees as follows:

a. District reserves the right to cause all discharges of storm waters into its canals or pipelines to cease should it receive evidence that any pollutants or other unhealthful or noxious matter, has been discharged into the storm drain system and is likely to reach its canals or pipelines.

b. City agrees that it alone shall be responsible for compliance with any applicable state or federal laws relating to the discharge of storm drainage and any related discharges into District's facilities, including the obtaining of any necessary permit under state or federal law, and City shall defend, indemnify and hold District harmless from any claim of violation of such state or federal laws arising from any discharge of storm water into its canals or pipelines pursuant to this Agreement.

9. City Payments In Lieu Of District Assessments Upon Annexation and Detachment. In consideration of the foregoing, and in recognition of the District's groundwater recharge benefits to the City and surrounding lands, City agrees to pay to the District on each Assessment Date an amount equal to the product of the number of Detached Acres multiplied times the Assessment Rate, where:

a. "Assessment Date" means the first day of January of each year of the term of this agreement;

b. "Detached Acres" means the total number of acres of all land that was within the

original boundary of the District and has, as of the Assessment Date, been both annexed into the City and detached from the District's boundaries; and

c. "Assessment Rate" means the total average per-acre rate assessed by District on the Assessment Date upon lands within the District that are adjacent to City's boundaries, including the portion of the rate imposed as a pass through federal environmental restoration charge pursuant to the Central Valley Project Improvement Act of 1992 and subsequent rules, regulations and agreements. By way of example only, assuming the average valuation of lands within the District adjacent to the City's boundaries as of the Assessment Date is \$2,000 per acre, and the lands are assessed at \$.80 per \$100 of valuation, this would result in an assessment of \$16 per acre. In addition to this, lands within the District are assessed a \$16 per acre federal environmental restoration charge. The City charge would therefore be \$32 per acre of Detached Lands. The Assessment Rate shall be adjusted annually if necessary to reflect the average per-acre rate assessed upon lands adjacent to City's boundaries on the Assessment Date, as determined by District.

The parties agree that all lands annexed into the City but not detached from the District shall continue to be assessed directly by the District and shall not be included as Detached Acres for the purpose of calculating the City's annual payment. The parties further agree that "Detached Acres" shall include, for the purpose of calculating City's annual assessment payment only, that land owned by City for which deliveries of surface water are made by District, including land used by City for its wastewater treatment facility.

10. Power Charges for Town Ditch Pump. In addition to the annual payment established in paragraph 7 above, City shall pay all power charges associated with the operation of the booster pump on the Town Ditch near the northwest corner of Section 15, Township 20 South Range 24 East.

11. Effective Date and Term of Agreement. The effective date of this agreement shall be the date last signed below. This Agreement shall expire 30 years after the effective date. This agreement shall have no force or effect upon a determination that the performance of any provision of this Agreement will result or has resulted in the violation of state or federal law.

12. City Obligations As Consideration For Benefits To City. It is the intention of the parties that City's obligations contained in this Agreement shall constitute consideration in exchange for the various benefits City may receive by reason of any of the following:

- a. the transportation by District of irrigation water or water for sinking purposes into the District,
- b. any pumping of ground water by City, or any agency thereof, within the boundaries of City, or otherwise,
- c. the disposal of storm drainage from City into the irrigation system of the District as Authorized by this Agreement, and
- d. any other direct or indirect benefits which may accrue to the City through the operations of the District.

13. Joint Operations Committee. City's City Manager and District's General Manager shall appoint at least two appropriate representatives to a Joint Operations Committee, which shall meet not less than once every six months for the purpose of addressing ongoing operational issues. As an initial matter, the Joint Operations Committee shall conduct an inventory of existing discharge sites and their capacities, and determining the authority for such sites.

14. Creation of Joint Development Policies. In addition to ongoing operation issues, the Joint Operations Committee shall initially undertake an effort to develop policies, procedures and standards to be applied by the respective parties in addressing development proposals within the City's boundaries that have the potential to affect or are affected by the existence of District's canals, ditches or pipelines. Such policies, procedures and standards to be drafted and proposed for adoption shall address the following issues, at a minimum:

- a. Uniform requirements and conditions to be imposed by District for the conversion of open ditches or canals to covered pipelines, including the responsibility of landowners or developers, the terms and conditions of pipeline easements that are required to be granted to District in conjunction with such conversion, the conditions under which encroachments will be allowed within such easements, standard specifications for pipelines, work to be performed by District and assignment of cost of such work related to conversion to pipelines, and the liability of the parties in relation to the converted pipelines and permitted encroachments.

- b. Requirements and conditions imposed by City and District for the fencing of District ditch, canal, pipeline and service road easement areas, including the specifications and standards for construction of such fences or walls, and separate specifications for residential and industrial development.
- c. Requirements for setbacks from District's ditches, canals or pipelines.
- d. Requirements for the aesthetic features of developments in relation to the ditches, canals or pipelines, and attendant improvements such as roads, fences, walls, walkways, trails, greenbelts or setback areas.
- e. Ongoing operational issues, as the parties may see fit.

The Joint Operations Committee shall meet at least quarterly and as long as may be necessary for the completion of the drafting of such proposed policies. Nothing in this paragraph shall be construed as a requirement by either party to adopt any specific policy, ordinance, standard or procedure, and each party shall retain full discretion in determining whether to adopt any specific policy, ordinance, standard or procedure.

15. Consideration of Joint Water Management and Other Projects. City and District agree to work jointly toward the development and consideration of projects to which City and District shall both contribute resources for joint benefit. Such joint projects shall potentially include, but not be limited to, the following:

- a. Development of groundwater recharge facilities.
- b. Acquisition of local water rights or imported supplies to provide mutual benefits.
- c. Development of a wastewater treatment program, whereby City delivers treated wastewater into District's water delivery system.
- d. Development of a program for surface water supplies to be delivered by District to City for municipal uses, including aesthetic or other non-consumptive uses.
- e. Joint ownership, construction and use of bridges.
- f. Telemetry (SCADA) and automation of City's storm water discharge operations into District conveyance system.
- g. Accommodation for property acquisition and construction by City of a fire station on District property.

The items noted above shall be addressed by the Joint Operations Committee, or by a subcommittee or separate ad hoc committee, as the parties may see fit. Nothing in this paragraph

shall be construed as a requirement by either party to adopt or agree to participate in any specific project, and each party shall retain full discretion in determining whether to adopt or agree to participate in any such project. .

16. Adoption of Recommendations of Joint Operations Committee. All recommendations of the Joint Operations Committee shall be referred to the City Council and the District Board of Directors for appropriate review consistent with their applicable required procedures for action on such matters. The approval of each governing body shall be required to adopt and implement such recommendations

17. Representations and Warranties of Authority. Each party represents to all other parties that such party has the full power and authority to enter into this Agreement, that the execution and delivery thereof will not violate any agreement to which such party is a party or by which such party is bound, and that this Agreement, as executed and delivered, constitutes a valid and binding obligation of such party, enforceable in accordance with its terms. The corporate, partnership, and association signatories to this Agreement expressly warrant that they have been authorized by their respective company, partnership, or association entities to execute this Agreement and to bind them to the terms and provisions hereof. Any public agency signatory to this Agreement represents and warrants that the Agreement is executed in compliance with a resolution of the governing entity of the public agency, duly adopted by the governing entity and transcribed in full in the minutes of the governing entity. Any individual signing this Agreement on behalf of a public agency represents that she/he has full authority to do so.

18. Duty to Cooperate. Each party shall cooperate so as to facilitate the other party's efforts to carry out its obligations under this Agreement.

19. Successors and Transferees. The obligations and benefits of this Agreement do not run with the land, and are personal to the City and the District and are not assignable or transferable.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this Agreement. The terms of this Agreement are contractual and not mere recitals. The parties further acknowledge that no warranties, representations or inducements not contained in this Agreement have been made on any subject in connection with this Agreement, and that

they have not been induced to execute this Agreement by reason of non-disclosure or suppression of any fact. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the parties or their authorized representatives. This Agreement is fully integrated.

21. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.

22. Severability. In the event any of the terms, conditions or covenants contained in this Agreement is held to be invalid, any such invalidity shall not affect any other terms, conditions or covenants contained herein which shall remain in full force and effect.

23. Governing Law. California law shall govern the interpretation and enforcement of this Agreement.

24. Remedies. Any motion or other action by the parties to enforce this Agreement shall be filed or otherwise brought and adjudicated in the Tulare County Superior Court. The Tulare County Superior Court shall maintain and reserve jurisdiction of this action for the purpose of enforcing the terms of this Agreement as a judgment or order of the Court. Nothing in this paragraph shall be interpreted in a manner to preclude whatever rights the parties may have to appeal rulings of the Tulare County Superior Court. The parties otherwise retain the full range of legal and equitable remedies to enforce the terms of this Agreement, including injunctive relief and specific performance, to ensure the parties comply with their commitments under this Agreement. In any action to enforce this Agreement, each party shall be responsible for its own attorneys' fees and costs. The parties shall meet and confer and attempt to resolve their differences informally before commencing any action to enforce this Agreement.

25. Further Assurances. In addition to the documents and instruments to be delivered as herein provided, each of the parties shall, from time to time at the request of the other parties, execute and deliver to the other parties such other instruments of transfer, conveyance and assignment and shall take such other action as may be required to more effectively carry out the terms of this Agreement.

26. Time of the Essence. Time is expressly declared to be of the essence of this Agreement and of every provision hereof in which time is an element.

27. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision thereof.

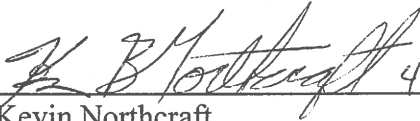
28. Notices. Where required by this Agreement, notice shall be provided by regular mail or overnight delivery, and shall be considered made when deposited in U.S. or express mail.


29. Counterparts. The parties may execute this agreement in counterparts. The counterparts, if any, constitute a single agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year last below written.

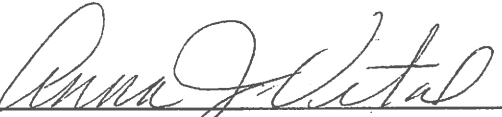
CITY OF TULARE
"CITY"

TULARE IRRIGATION DISTRICT
"DISTRICT"

By:  4-20-05
Kevin Northcraft Date
City Manager

By:  5-10-2005
David G. Bixler Date
President, Board of Directors

Attested

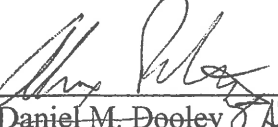
By: 
Anna J. Vital Date
Deputy City Clerk

By:  May 11, 2005
J. Paul Hendrix Date
General Manager

Approved as to form and content.

Approved as to form and content.

By:  4/19/05
S.L. Kabot Date
City Attorney

By:  5/2/05
Daniel M. Dooley & Alex M. Peltzer Date
District Counsel